



THE TOWN OF  
RHINEBECK · NEW YORK  
FOUNDED 1686

Applying for a Use Variance  
Town of Rhinebeck Zoning Board of Appeals

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General Information and Helpful Suggestions

**When to use this Form**

If you applied for a permit to the Building Department and were denied because the way you want to use your property is not allowed by the Town of Rhinebeck Zoning Law, you can apply to the Zoning Board of Appeals (“ZBA”) for a use variance.

**! Caution:**

The New York State Department of State (NYS DOS) has said that, since a use variance grants permission to the owner to do what the use regulations prohibit, this power of the board of appeals (ZBA) must be exercised very carefully lest there be serious conflict with the overall zoning scheme for the community. The showing required for entitlement to a use variance is therefore intended to be a difficult one.

By applying for a use variance, you are seeking “relief” from the Zoning Law’s regulations in the form of permission to use your property in a way which is not allowed by the Zoning Law.

Consequently, you should consider very carefully **before you apply** whether you can meet the standards for a use variance. As the applicant for a use variance, you will have the burden of proving your case and establishing with competent evidence that each one of the mandated use variance standards are met in your case.

Your application and your participation in the review process is likely to require a significant expenditure of effort, and in some cases, an expenditure of significant expense. You will also be required deposit funds in the ZBA’s escrow account to facilitate the ZBA’s use of its own attorneys and/or consultants to assist the Board in its review of your application. You cannot recover your expenditures if the use variance application is denied.

It is suggested that a consultation with a land use or real estate attorney may be prudent before you commit to making an application for a use variance.

**What is a Use Variance?**

The Town of Rhinebeck Zoning Law has divided the entire Town into Zoning Districts. The Table of Allowed Uses appended to the Zoning Law sets forth the individual uses that are allowed in each of the Town’s Zoning Districts. Any uses of land that do not appear on that list are prohibited.

A use variance is the authorization and permission from the ZBA to use land in a manner that not allowed by the Town of Rhinebeck Zoning Law.

Use variances are permitted under both New York State law and the Town of Rhinebeck local law.

**What Do You Need to Show?**

As the Applicant, you have the burden of proof to demonstrate to the ZBA that a use variance should be granted to you. It is up to you to make your case to the ZBA by the written submissions, evidence, testimony

and presentations that you provide to the ZBA in the application and during the course of the Board's review of your case.

As mentioned above, as a matter of land use policy use variances are not encouraged, and the test to be met by applicants is difficult by design. The overall statutory test for the issuance of a use variance is whether the strict application of the Zoning Law is an unnecessary hardship to the property owner, and to afford a potential means of relief to an individual property owner.

Section 125-124(B)(1) says that a use variance cannot be granted by the ZBA without a showing by the applicant that the applicable regulations and restrictions imposed by the Zoning Law have caused unnecessary hardship. And in order to prove such unnecessary hardship, the applicant must demonstrate to the ZBA the following four (4) factors for each and every permitted use under the Zoning Law for the particular Zoning District in which the property is located:

- (1) **Factor 1:** The applicant cannot realize a reasonable return, provided that the lack of return is substantial as demonstrated by competent financial evidence.

**Explanation:** In order to meet the test for this factor, an applicant must prove that he or she cannot realize a reasonable return from each of the uses permitted in the Zoning District in which the property is located. The mere fact that the property owner may suffer a reduction in the value of property because of the Zoning Law, or the fact that another permitted use may allow the sale of the property for a better price, or permit a larger profit, does not justify the granting of a use variance on the grounds of unnecessary hardship. In addition, there is a standard for how the applicant must prove a case for this factor. The courts have held that only by actual "dollars and cents proof" can lack of reasonable return be shown. This may require an applicant to get professional assistance in meeting the standard of proof for this factor.

- (2) **Factor 2:** The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

**Explanation:** In order to meet the test for this factor, an applicant must prove that the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. The courts have held that there must at least be proof that a particular property suffers a singular disadvantage through the operation of the Zoning Law before a use variance can be issued. The courts have also held that the "uniqueness" relates to the hardship, which in turn relates to the land, and not to the personal circumstances of the owner.

- (3) **Factor 3:** The requested use variance, if granted, will not alter the essential character of the district or neighborhood.

**Explanation:** Because one of the basic purposes of zoning is to adopt reasonable regulations in accordance with a comprehensive plan, it follows that changes which would disrupt or alter the character of a neighborhood, or a district, would be at odds with the very purpose of the zoning regulation itself. In order to meet the test for this factor, an applicant must prove that granting a use variance to you in this case will not be incompatible with the Rhinebeck's over-all land use plan and policy for the development of the Town and will not create conditions distinctly different from those existing in the surrounding neighborhood and will not alter or damage the essential, existing neighborhood character.

- (4) **Factor 4:** The alleged hardship has not been self-created.

**Explanation:** It is well settled that a use variance cannot be granted where the "unnecessary hardship" complained of has been created by the applicant, or where she/he acquired the property knowing of the existence of the condition she/he now complains of. Self-created

hardship means you are not responsible for creation of the hardship that you are complaining of in asking for a use variance.

These factors are listed in the application. It is beneficial for your case to answer these questions fully and with as much detail as you can, and providing evidence where that is appropriate. The more information and evidence you provide, the more helpful it will be to your case, and to the ZBA.

### **What are the ZBA's Duties and Obligations?**

The ZBA will hear your case and make a decision based on the four factors listed above. Again, the law requires that the ZBA must find that you have met your burden of proof with regard to each one of the four factors before a use variance can be granted by the Board. The ZBA will make its determination based on the content of your application and on any other evidence or testimony you submit to the Board over the course of its review. The ZBA will also hold a public hearing and accept testimony and evidence from members of the public. The ZBA is not required to do any outside investigation beyond the application and open meetings. The burden of proof rests on the applicant. This is why it will be important for you to provide the ZBA with as much information and evidence as you can in this application and in your presentation.

The Zoning Board of Appeals, in the granting of a use variance, shall grant the minimum variance that is deemed necessary and adequate to address the unnecessary hardship proved by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

The ZBA also has the authority to impose reasonable conditions upon your variance if it is granted. The conditions would be directly related to and incidental to the use of the property. The purpose of these conditions is to minimize the adverse impacts the variance may have on the surrounding neighborhood and community.

More information about the ZBA and the process can be found in the Town of Rhinebeck Zoning Law, Article XI, "Zoning Board of Appeals".

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Application – ZBA Case No. \_\_\_\_\_

**Instructions: Please complete this form with as much detail as you can provide to the Zoning Board of Appeals. If you should require more space to write, please include any additional attachments and documents to this application.**

Date Submitted: \_\_\_\_\_

1. Applicant(s): \_\_\_\_\_

2. Contact Person (if different from Applicant): \_\_\_\_\_

3. Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

4. Phone: \_\_\_\_\_ E-Mail: \_\_\_\_\_

5. Property Address where variance is requested: \_\_\_\_\_  
\_\_\_\_\_

Tax Map #: \_\_\_\_\_ Zoning District: \_\_\_\_\_

6. Property Owner (if different from Applicant): \_\_\_\_\_

Please describe the proposed use you plan to conduct on the premises:

\*This will provide the ZBA with relevant information about what type of use you are proposing for the premises.

**Note: The overall statutory test for the issuance of a use variance is whether the strict application of the Zoning Law is an unnecessary hardship to the property owner, and to afford a potential means of**

relief to an individual property owner. In making a decision whether or not to grant a use variance in your case, The ZBA is required by law to consider the following four (4) factors. Under the law, you have the burden of proving your case with regard to each and every one of those factors. Please provide as much detail as you can to help the ZBA better understand your application and how your request for a use variance meets each factor of the test. You should include evidence to support your arguments with regard to each of the four factors.

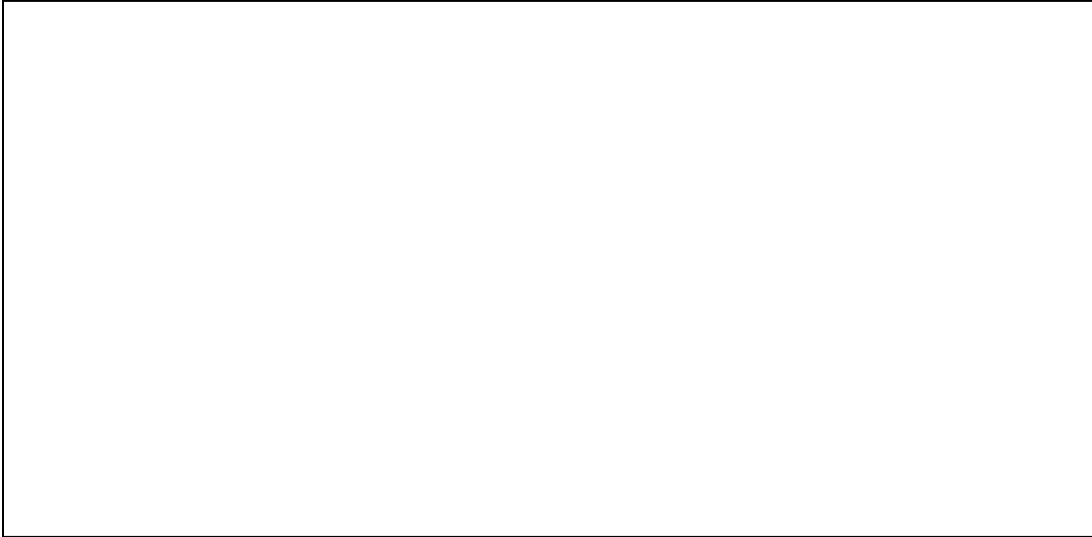
**Factor 1.** Please explain why you cannot realize a reasonable return on your property, provided that lack of return is substantial as demonstrated by competent financial evidence. To do this, you must explain why you cannot obtain a reasonable return on your property for each of the allowed uses permitted in the Zoning District in which the property is located. You must include evidence in the form of “dollars and cents proof” in order to successfully meet this factor. The space below will likely not be sufficient for an adequate explanation of why your case satisfies this factor. Please attach any additional documentation and evidence as needed to adequately address this factor.

\*As the applicant, you must prove that you cannot realize a reasonable return from each of the uses permitted in the zoning district. A mere reduction in property value does not justify the granting of a use variance.

**Factor 2.** Please explain why the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood. The space below may not be sufficient for an adequate explanation of why your case satisfies this factor. Please attach additional documentation and evidence as needed to adequately address this factor.

\* The hardship condition must be relatively unique to your property. It cannot be so generally applicable such that all parcels within the zoning district are similarly situated. This uniqueness requirements relates to the condition of the land as opposed to personal circumstances of the owner.

**Factor 3.** Please explain whether the proposed use variance, if granted, will not alter the essential character of the Zoning District or neighborhood. Please attach any additional documentation and evidence as needed to adequately address this factor.



\* The use variance, if granted, cannot disrupt or later the character of the neighborhood or the district.

**Factor 4.** Please explain why the alleged hardship has not been self-created. Please attach any additional documentation and evidence as needed to adequately address this factor.



\*Self-created hardship means you are not responsible for creation of the hardship that you are complaining of in asking for a use variance.

Please attach the following to this application and provide 8 hard copies and 1 electronic copy, unless otherwise specified:

\* All Required documents including the electronic version must be submitted by the Agenda Close date or it will be put on the Agenda for the next meeting\*

- The Letter of Determination by the Zoning Enforcement Officer;
- Any cover letter or narrative;
- Map showing the existing conditions or site plan, including site topography, existing development and significant natural features, such as wetlands and stream courses. This can be on an existing survey or obtained with help from the Clerk using ParcelAccess;
- Plot plan (drawn to scale), showing parcel with existing buildings and proposed new structures or additions, if any;
- Photos showing a visual image of the existing property;
- Photo simulations of the completed project, if possible;
- Professional reports, if any, on the matter of dollars and cents proof of your inability to obtain a reasonable return from your property under the permitted uses in the Zoning District;
- Any technical reports (archaeology, traffic, wetlands, storm water management, etc.), if available;
- Owner's Consent Note ("The Application Certification Authorization Form"), if applicable;
- One check for the use variance fee - \$550.00
- One signed copy of the Escrow Agreement
- One check for initial escrow deposit = \$800.00

**Applicant Signature:** \_\_\_\_\_ **Date:** \_\_\_\_\_

## What happens next?

After you have received a determination letter from the Zoning Enforcement Officer and applied for a use variance, the next step will be to present your case to the ZBA.

- **Scheduled Date the ZBA hears your application.** The Secretary to the ZBA will provide you with a date on which the ZBA will hear your application. At this meeting, the ZBA will ask that you make a brief presentation of your proposed project and why you are seeking a use variance.
- **Application Accepted as Complete.** The ZBA will review your application and determine if it is complete to begin their review. The ZBA will also classify the action under the New York State Environmental Quality Review Act to determine if any additional environmental review is required for your proposed project. The ZBA may also require that certain referrals be made to other agencies. This is based on what the proposed project is and where the project is located. If your application is deemed complete and there is no environmental review required, the ZBA will schedule a public hearing.
- **Schedule Public Hearing.** The public hearing allows members of the public to voice their support or opposition for the application. Comments made during the public hearing are added to the record and considered by the ZBA in their decision.
- **Mail Public Notice.** Before the public hearing takes place, the Secretary to the ZBA will circulate a public notice that will be placed in the local newspaper and on the Town of Rhinebeck website. This is to let the public know the date and time of the meeting, and afford them the opportunity to speak before the ZBA. In addition, a notice will also be sent to any adjoining properties and any landowner that is within 500 feet of the property's boundary line. The Secretary of the ZBA will be responsible for circulating the public notice. **\*\*The Applicant will be responsible for paying the cost of mailing the notices\*\*.**
- **Attend Public Hearing.** The ZBA will open the public hearing. They can either keep the public hearing open for further comments or close the public hearing.
- **Decision.** Once the public hearing is closed, the ZBA will issue a decision within sixty two (62) days of the close of the public hearing. The ZBA, on occasion, may ask the Applicant to allow for an extension beyond those sixty two (62) days. If the Applicant agrees, then a new deadline will be set for the decision.